

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Review of Regulatory Requirements for
Incumbent LEC Broadband
Telecommunications Services

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CC Docket No. 01-337

**COMMENTS OF
MPOWER COMMUNICATIONS CORP.
ON BROADBAND**

MPOWER COMMUNICATIONS CORP.

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Summary

Broadband is not competitive. ILECs have spent immense amounts trying to convince Congress and the FCC that it is because this is the perfect way to kill-off competitors, re-establish an intra-modal monopoly and achieve an inter-modal duopoly, with cable, which would not compete on price. With the addition of de-regulation, they would achieve the horrifying result of no competitors, no competition on price and no regulation!

To understand why this result would occur, it is necessary to appreciate the rapidity of technological progress, which is already allowing narrowband POTS services to be delivered as a packet stream across a broadband service. Thus, if broadband is de-regulated and CLECs are denied access to fiber networks, CLECs will be relegated to outdated technology and products and any remaining CLECs will likely be forced out of business.

Mpower believes that networks, whether ILEC or cable, must be shared for any meaningful competition to exist. Further, there is considerable evidence that broadband networks are under-utilized because broadband services are over-priced and there are presently no “killer” applications. Despite the long-raging war over TELRIC pricing, such pricing should not be a problem. It was developed precisely for such forward-looking costs. If ILECs need to make up for revenue shortfalls, residential rates should be priced at market rates. This might also allow some residential competition to develop.

In short, broadband is not competitive. Special access is a clear example. ILEC arguments are circular, certain UNEs and special access are functionally equivalent, and ILECs have considerable market power. They are, however, now seeking unfettered

power. This must not happen if the Commission has any concern for competitors, competition or consumers.

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Mpower Communications Corp. ("Mpower") hereby submits its Comments on the issues raised by the Federal Communications Commission ("Commission" or "FCC") in its Notice of Proposed Rulemaking ("NPRM") on broadband issues.

I. Introduction

According to a *Wall Street Journal* article of January 28, 2002:

Until efforts to promote broadband begin to address demand instead of supply, the big broadband push isn't going anywhere.

A few key numbers sum up the story. Anywhere from 70% to 80% of U.S. households can already sign up for high-speed cable-modem Internet access if they want it. In one estimate cited by the Federal Communications Commission, at the end of last year cable-modem service was expected to be available to more than 81 million homes. But fewer than 10% of those homes were expected to have subscribed.

Does that sound like we need a national push for bigger broadband networks? Numbers for phone-company DSL lines tell a similar tale, with an estimated 51.5 million U.S. homes able to get the service at the end of 2001 – and less than 10% signed up, according to figures cited by the FCC.¹

¹ *Wall Street Journal*, "Broadband Advocates Should Fight to Increase Demand, Not Supply," 1/28/02.

As Mpower will discuss, this gives the Commission time to consider these issues carefully, taking into account the life-and-death nature of these decisions for competitive local exchange carriers (“CLECs”).

As technology has developed, fiber “pipes” increasingly carry the world’s telecommunications signals. Fiber is currently the medium of choice because of its capacity and because of its performance characteristics. Other media such as wireless – whether terrestrial or satellite – are still in a developmental phase by comparison. With wireless, for example, there are still cost issues, transmission delay problems and spectrum constraints.

Fiber “pipes,” however, are well developed and are capable of enormous capacity. One strand of fiber can provide more capacity than most end-users will ever need. Consequently, it is generally uneconomic to duplicate the “last mile” to end-users – somewhat like constructing parallel highways. It is very expensive and does not achieve significant incremental value.

It is particularly important to be aware that voice and data increasingly use the same or very similar technology. As a result, in the future it will not be very useful to distinguish between voice and data and it will not be possible to treat broadband and traditional network architectures differently. These facts mean that broadband as well as traditional networks must be shared to achieve economic efficiency. For competitive companies such as Mpower, which has its own switches but buys or leases transport capacity and loops, this means there must be “end-to-end” unbundled network elements

(“UNEs”) regardless of technology in the network or equipment on the loop. If there are regulatory, technological or other barriers to using “the last mile” of network -- whether copper, fiber or other technology -- it will become impossible to reach our customers. Many other CLECs are in a similar position. Consequently, without “end-to-end” UNEs, i.e. the ability to reach customers regardless of where they are in the telecommunications network, the goal of widespread competition can never be achieved.

II. Broadband Networks

Given that broadband networks are currently under-utilized and that CLECs must have access to these networks to survive, how should the Commission move forward? First and foremost, the Commission must thoroughly understand the nature of today’s networks and of competition within and between networks. Then, it can make the most effective decisions as to when, where and how to loosen regulatory burdens.

To know whether it is useful to encourage investment in broadband one must know the potential implications of doing so. Fundamentally, investment in new broadband networks should make the speed of broadband applications substantially faster. This can be important in encouraging the development and implementation of applications which most benefit from speed and capacity. This could encourage, for example, tele-medicine applications, video-conferencing applications, music and entertainment applications, “broadcasting” over fiber and as yet unknown commercial and other applications.

What is already happening as a result of new technology and upgraded networks, however, is that POTS/voice is being moved from the incumbent local exchange carriers’

(“ILECs”) old copper networks onto their new fiber networks.² These networks are faster, more reliable, less expensive to maintain and provide better quality service. Given the current convergence of technology, increasingly all ILECs will move voice communications on to their new, upgraded networks.

III. CLECs and ILEC Broadband Networks

As ILECs move toward a convergence of their data and voice systems, they are likely to de-activate some or all of the copper loops in the ground. To the extent that copper remains available in ILEC networks, CLECs presumably could continue to lease those loops, at least for traditional POTS voice traffic. If broadband services on both copper and fiber networks were de-regulated, however, the provisioning of high-speed services, including DSL, would become unavailable to CLECs. While availability of copper networks might serve CLECs as a viable transition mechanism for a period of time, without access to the ILEC broadband networks, CLECs would be relegated to outdated technology and loops or to no loops at all! If ILECs reduce CLEC access to ILEC networks, ILEC plant will not be stranded. CLECs, however, will be “stranded” and separate CLEC plant will also be stranded. The results are obvious. Any CLECs that had not already disappeared would likely be forced out of business and ILECs would re-establish their intra-modal monopoly control over the telecommunications networks.

These facts were reinforced by a January 18, 2002, article on the front page of the *Wall Street Journal*, on lobbying for support of broadband rollout, which characterized the state of broadband as follows:

² Sprint testifies that it intends to “replace its traditional circuit switched network with a packet switched network” in order to begin moving its voice traffic, as well as data traffic, by packet switching technology. Testimony of Richard G. Pfeifer, VP, External Affairs, for Centel/Sprint, in Sprint’s 2002 Nevada rate case, p. 6.

Broadband is now largely controlled by two oligopolies: the cable industry, which delivers service through cable modems; and the Baby Bells, which use digital subscriber lines, otherwise known as DSL. With their smaller competitors failing, both boosted their prices sharply last summer to around \$50 a month from around \$40, further slowing the pace of new subscriptions. Today, fewer than 10 million American households and businesses have high-speed Internet access.

* * *

But high-tech and telecommunications firms have differed sharply on how to bring about an increase in broadband deployment. For the Bells, the broadband strategy has become entangled in an extremely controversial effort to roll back provisions of the landmark 1996 Telecommunications Act. That law allows the Bells to sell long-distance phone and data service, but only after they've opened their local markets — the so-called “last mile” of phone service -- to competition....

A ... proposal, known as the Tauzin-Dingell bill, would allow the Bells to carry the voice and data traffic without having to prove that their local markets are open to competition. The bill is ardently opposed by the cable industry, long-distance companies like AT&T Corp., and the Bell's few remaining local competitors. These local players believe that bill would allow the Bells to cement their dominance over the DSL market while quashing any chance of competition in the local phone market.³

As clearly outlined in the *Wall Street Journal* article above, broadband is presently controlled by two oligopolies, cable and ILECs. Unless CLECs are guaranteed continued access to ILEC networks, neither broadband nor local phone service will ever be competitive and ILECs will be able to use their cited “dominance over the DSL market” to their own advantage rather than to the public's advantage. In this regard, it should be noted that DSL is not a newly developed technology. It has existed for many years. Only after CLECs began to enter the marketplace to sell DSL did the ILECs respond in kind.

³ *Wall Street Journal*, “Plugging In: Tech Lobbyists Seek Bonanza in New Push for Speedy Internet,” 1/18/2002.

Without CLEC access to ILEC broadband networks, there will be no guarantees of CLEC ability to provide either broadband or narrowband services⁴ and no ready means of transition to a more competitive marketplace. As noted in the *Wall Street Journal*, above, broadband is controlled by two oligopolies. This means intra-modal or telecommunications services are dominated by the Bells, whereas inter-modal services are a duopoly. Duopolies do not compete on price. Without CLECs, there is no real competition at all. Thus, if competitive broadband is a desired goal, CLECs are necessary to avoid monopoly or duopoly.

There has been considerable discussion in the industry regarding whether it is necessary for competitors to construct entirely new networks in order to compete. As noted above, fiber “pipes” have enormous capacity. They are also relatively expensive to install to individuals or small and medium-sized business users. Further, one strand of fiber can provide more capacity than most end-users will ever need. Today, a single pair of optical fibers can support over 32,000 POTS lines or 10,000 Mbps worth of data throughput. Thus, Mpower believes it is generally uneconomic to duplicate the “last mile” to end-users.

Further, most of today’s local telephone networks were built with ratepayer funds over a period of almost 100 years. Similarly, cable networks were built over several decades. Certainly it would be a fatal mistake for CLECs to attempt to deploy a third local wireline network nationally in the near future. While wireless and satellite technology are moving forward at a significant pace, there are still cost issues, transmission delay problems and spectrum constraints. As a result, it will likely be many

⁴ Note that packetized voice is a broadband service and that the transition from POTS to “POTS in packets” has already begun. (See footnote 2 above.) To date, Mpower itself has provided service for more than

years before fixed wireless or satellite systems present a serious challenge to the ILEC and cable networks.

Consequently, Mpower believes that the sharing of networks must be mandatory. Mpower sees two major alternative means of providing this needed sharing of networks: 1) the effective implementation and enforcement of appropriate UNEs or 2) structural separation, such that telecommunications networks become wholesale businesses equally open to CLECs and ILECs alike.

Failure to share networks effectively is a significant obstacle to competition. An unwillingness to share networks can also be an obstacle to the deployment of new technology. This need not be the case, however. Some companies have undertaken massive network restructuring, e.g. SBC's Project Pronto, and have offered to share that network at what are said to be TELRIC (total element long run incremental cost) rates. Without such sharing, the end result will certainly be re-constituted monopolies.

Although Mpower believes it is economically necessary to share networks, there are mutual benefits to doing so. The ILECs from whom most network elements are leased receive numerous benefits from being able to "sell" capacity on their networks. First, they get paid. Second, selling a portion of their network capacity helps to "fill the pipes" and such wholesale business can become a significant source of revenue for ILECs. Third, such wholesale business helps to pay for new investment. Fourth, since investment in fiber purchases enormous capacity, the use by CLECs of some of this capacity is efficient because it makes greater use of the investment at an earlier date.

Further, at a high level of generality, competitive carriers have only a few basic requirements for ILEC networks. First, they need open access to incumbent networks.

15,000 POTS lines at over 3,000 customer locations using packet voice technology via broadband loops.

Second, and implied by the first requirement, they need technologically neutral interfaces to the ILEC network so that they can use equipment which suits their own goals and business plans. Third, they need an adequate means of traversing DLCs (Digital Loop Carriers), which make up an increasing proportion of the ILEC network architecture. If the increasingly numerous DLCs in ILEC networks are not constructed to allow for ready sharing, this can become an overwhelming problem for competition.⁵ Fourth, they need to have access to copper in the short run and as a transition mechanism. In order to compete, competitors must have up-to-date technology. Ultimately, they cannot compete against new technology with old technology. If, however, they have begun by using technology suitable to copper, e.g. DSL (digital subscriber loop), they need access to copper for the period of time such copper-based products are viable and for the period of time that it takes the CLEC to make a transition to the use of newer technologies. These periods of time, of course, will likely overlap.

Consistent with these principles, it also makes sense to require open access to cable networks. Since one strand of co-axial cable, -- like fiber -- provides more than adequate capacity for most end-users, it generally does not make sense to replicate the “last mile,” regardless of whether the “last mile” is served with fiber or co-axial cable. Whoever controls the “last mile” with high capacity facilities likely has a monopoly or duopoly and should share facilities at appropriate wholesale rates.

IV. Broadband Network Investment

As noted above, current broadband networks are under-utilized. Nevertheless, on the purported need for an incentive to invest, ILECs are lobbying hard for a mechanism

⁵ It should be noted that ILEC concerns about sharing network access through remote terminals (“RTs”) are largely overblown. With end-to-end UNEs, most, if not all, issues regarding collocation in RTs can be

to spur investment in such networks. They strongly suggest that the necessary “incentive” is the de-regulation of broadband networks. As Mpower sees it, this proposal is the perfect means of assuring the return to ILEC intra-modal monopoly of telecommunications services. First, as explained above, it would likely toll a death knell for any remaining CLECs. They need access to ILEC networks, including broadband. At the same time, it would allow ILECs once again to provide services in a monopoly environment and to continue to raise the price of broadband. This time, however, they would have a monopoly without the restrictions of regulatory oversight. Talk about the best of all worlds for the ILEC! No competitors and no regulators.

If broadband usage rather than broadband investment is the immediate issue, however, several questions need to be asked about why broadband usage is so low. First of all, prices are much too high for what the consumer gets. As reported by the *Wall Street Journal* on January 18, 2002, “With their smaller competitors failing, both [the cable companies and the Bells] boosted their prices sharply last summer to around \$50 a month from around \$40, further slowing the pace of new subscriptions.”⁶

Perhaps equally important, there currently are no “killer” applications available. As explained in a *Wall Street Journal* article of January 28, 2002:

A while back, there was a compelling reason to get a broadband connection. It was called Napster. And it was crippled by recording-industry lawsuits. If cable and telecom companies want someone to blame for broadband’s lackluster growth, how about the record companies, which still aren’t giving consumers what they want.

* * * * *

Instead of breaking the online-music logjam, Congress will instead consider the Tauzin-Dingell bill, a measure designed to make life easier for the Baby Bell

avoided.

⁶ *Wall Street Journal*, “Plugging In: Tech Lobbyists Seek Bonanza in New Push for Speedy Internet,” 1/18/2002.

local-phone monopolies. Apparently lawmakers believe that less competition and higher prices will spur consumers' interest in new services.⁷

A third reason for the limited demand for broadband services is a lack of new means of protecting copyrighted materials which might make up new and compelling content for broadband.

Lawrence Lessig, a copyright expert and law professor at Stanford University, has an idea that would benefit consumers and boost broadband at the same time. Congress could mandate a compulsory Internet licensing system. It would let start-ups offer music services without securing agreements from all the record companies, but it would still ensure that copyright holders were compensated. A similar system allowed cable-TV companies to carry broadcast-TV signals. 'The goal is to make sure existing content owners can't leverage that control into control of the next-generation technology,' Prof. Lessig says.

* * * * *

Internet users are about to encounter another cycle of copyright bickering, this time over video. Last year, SonicBlue introduced a new version of the ReplayTV digital video recorder that could record a show from television, then beam the recording to a friend over the Internet....

Before anyone starts digging trenches for more fiber-optic lines or wiring up more homes for broadband, we need to resolve the copyright dilemmas and figure out other persuasive reasons for consumers to upgrade to higher speeds.⁸ (Emphasis added.)

The ILECs, of course, maintain that other issues are chilling investment. Most frequently heard are complaints about forward-looking cost models and TELRIC in particular. Any weaknesses these models have are not reflected in the area of new investments such as fiber, however. Almost by definition, the costs of new investments are covered by forward-looking cost models. Since fiber investment is a forward-looking or future oriented investment, its costs are among those most likely to be covered effectively. Further, current statutory definitions provide for the inclusion of a fair profit.

⁷ *Wall Street Journal*, "Broadband Advocates Should Fight to Increase Demand, Not Supply," 1/28/02.

⁸ *Id.*

High on the list of specific complaints about forward-looking cost models is that they do not cover all of the past, embedded costs. They should not cover such costs. Monopoly ratepayers have long been covering these costs and duplicate cost recovery is not appropriate.

It seems clear, however, that the main reason ILECs complain about forward-looking or TELRIC-based rates is not because TELRIC does not cover costs appropriately. It is because as competition begins to emerge, the ILECs' most lucrative customers are likely to be sought and won first. This lessens revenues from customers who traditionally have subsidized other, uneconomic ILEC rates. Most glaring are residential rates, which typically have been subsidized by large and middle-sized business rates. For the most part, residential rates have not been "re-balanced" and do not pay their way. The answer is to allow market pricing of residential services .

Further, it is necessary to undertake this effort before additional "tinkering" with the wholesale rules affecting competition. More "band aids" are relatively ineffective in the face of such major structural flaws. In fact, some ILECs would likely admit that while subsidized residential rates hurt ILEC revenues, they can usually make some profit by selling features and other "add-on" services. CLECs, on the other hand, are typically kept out of the residential market entirely because they cannot compete with the subsidized residential rates.

ILECs may also claim technical and operating issues if they must share their networks with CLECs. This is a false issue for more than one reason. If ILECs are assuming a zero-sum game, they already have a good idea of how to size the network. The only difference would be that CLECs would have some of the customers.

If ILECs are assuming a non-zero-sum game, there will be more business for everyone. This is an argument for bringing more CLECs onto the ILEC network as wholesale customers. Further, forecasting and related guarantees can reduce or eliminate potential excess capacity attributable to CLECs. Further, capacity can be increased incrementally by means of the electronics attached to the loop. It is not necessary to install the highest capacity electronics immediately upon putting the fiber into the ground.

In addition, there are other potential protections for the ILECs. For example, if the FCC approved Mpower's FLEX contract petition⁹ and established wholesale contracts not subject to pick and choose, ILECs and CLECs could determine their own mutually advantageous wholesale business arrangements, including volume and term discounts, minimum purchase agreements, minimum service quality standards, provisioning and repair time frames, etc. FLEX contracts would be entirely voluntary and would represent a cautious and immediate means of making a transition toward market-based solutions.

V. Is Broadband Competitive?

In the Broadband NPRM,¹⁰ the Commission stated that:

[W]e seek comment on whether incumbent LECs possess market power with respect to certain inputs such as special access services, which they could use to raise rivals' costs in certain broadband service markets where these inputs are critical to a firm's ability to provision the particular broadband service to end user customers.¹¹

⁹ Mpower filed its *Petition for Forbearance and Rulemaking* with the FCC, CC Doc. 01-117, on 5/25/01, outlining its request for approval of "FLEX Contracts."

¹⁰ *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Rel. 12/20/01.

¹¹ *Id.* at ¶ 29.

This is but one area where ILEC control of network access affects CLEC costs and CLECs' ability to offer the products and services they choose or to offer any products and services at all. As noted above, CLECs must have access to ILEC networks for the "last mile," in particular to get to their customers. As networks become more and more dominated by fiber technology, CLECs must have access to "end-to-end" UNEs, regardless of the equipment or functionalities in the network.

As to special access, ILECs are likely to continue to assert that special access is competitive. CLECs, including Mpower, see no compelling evidence that this is so. Their experience, in fact, is that special access is not competitive.

The ILEC argument that special access is competitive is quite circular. It is premised on the limited facts which allowed the ILECs to obtain flexible pricing. The flexible pricing decision used the presence of a limited amount of collocation of equipment by competitors in ILEC central offices as an indicator of the existence of competition. For Phase I relief, the ILEC had to show collocation in only 15% of wire centers within an MSA and that "at least one competitor...rel[ies] on transport facilities provided by a non-incumbent LEC in each wire center relied on."¹² (Emphasis added.) Thus, the ILECs cited very limited amounts of competitive facilities, which were collocated under mandate of the Telecommunications Act of 1996 ("1996 Act") and FCC decisions interpreting that Act, in order to attain pricing flexibility. They then attempt to use pricing flexibility and the limited amount of competition garnered under the mandates of the 1996 Act to seek removal of the very mandates that allowed there to be any competition at all! This would also allow them to "remove" the nascent competitors, on the basis that there is competition!

In addition, certain UNEs and special access are functionally equivalent. From an equipment standpoint, they are interchangeable. They are provisioned over the same lines and with the same equipment. When UNEs are not available or are not immediately available, CLECs frequently substitute special access in order to be able to serve their customers. Some CLECs, in fact, have complained that they feel pushed into ordering the more expensive special access product because of the poor provisioning, long delays and inadequate repair and maintenance of UNEs only to encounter similar problems with special access.

An increasing number of complaints are being filed outlining the inadequate performance of special access lines. If special access were really competitive, companies might complain but they would move to a better company and solve the problem. That just isn't happening. The reason is that, typically, there are no other choices.

Although ILECs often point to their having gained Phase I pricing relief as an indication of competition, such pricing flexibility does not purport to represent an uncontrolled or free market. With Phase I pricing relief, ILECs “may offer contract tariffs and volume and term discounts, while remaining subject to some price cap rules and tariff requirements.”¹³ Also, the Phase I relief, based on the percent of collocation, applied only to dedicated transport services.¹⁴ Other and much higher criteria apply to channel terminations or common line and traffic-sensitive services.¹⁵ Also, the measures used for pricing flexibility are fairly restrictive geographically, further undercutting any argument that special access services are generally competitive.

¹² *WorldCom v. FCC*, 238 F.3d 449, 455-56 (2001).

¹³ *Id.* at 455.

¹⁴ *Id.*

¹⁵ *Id.* at 456.

Thus, Mpower believes ILECs have significant market power in the special access arena. ILECs, while asserting the competitiveness of special access and broadband more generally, implicitly admit that they have considerable market power in these areas when they assert that although broadband is needed, they will not make the investment to provide it unless they are given more regulatory flexibility. Only monopoly or dominant players can effectively threaten to withhold their services or facilities in order to pressure others to meet their demands.

These facts were reinforced by a February 11, 2002, article on the front page of the *Wall Street Journal*, on the growing power of ILECs as they have consolidated into fewer and fewer Bell companies:

‘[SBC is] a very, very aggressive company. There’s no doubt about that,’ says Terry Harvill, head of the Illinois Commerce Commission, which narrowly approved the Ameritech merger in 1999. Last year, Illinois regulators got into a confrontation with Mr. Whitacre after trying to force SBC to share its data lines with competitors. Mr. Whitacre sent an angry letter threatening to slow the company’s rollout of speedy Internet access if regulators didn’t ease off. SBC later made good on the threat.

‘Saying they’ll withhold DSL from that many people is really concrete evidence that you’re dealing with a textbook monopolist,’ says Mr.. Harvill.¹⁶

In trying to determine whether broadband is competitive, it is crucial to remember that today’s technology can make “narrow-band” copper loops into “broadband,” i.e. DSL, and that fiber, i.e. broadband, carries voice traffic over much of the network. Therefore, CLECs need access to ILEC networks. Period. With access to ILEC networks, they have the needed ability to use either copper or fiber, as required, to connect their products to their customers. Special access, like some UNEs, is an

¹⁶ *Wall Street Journal*, “Local Phone Giants Beat Back Rivals, As Competition Stalls,” 2/11/2002.

important means of connecting CLEC customers to ILEC networks and providing access to broadband capacity.

Unless CLECs are guaranteed continued access to ILEC networks, neither broadband nor local phone service will ever be competitive and ILECs will be able to use their dominance over the DSL market to their own advantage rather than to the public's advantage. In this regard, it should be noted that DSL is not a newly developed technology. It has existed for many years. Only after CLECs began to enter the marketplace to sell DSL did the ILECs respond in kind. If competitive broadband is a desired goal, CLECs are required to avoid monopoly or duopoly.

VI. BellGate

ILECs have been pulling out all the political stops and have been diverting an immense amount of resources to obtain their ends. The TELRIC appeal, the UNE Remand appeal, the Tauzin-Dingell bill, the Three RBOC petition to end high capacity UNEs and the SBC petition to be declared non-dominant in broadband are just some of the most recent, higher profile tactics engaged in by the Bells in their attempt to emasculate the 1996 Act.

For a hundred years, the Bell companies have had a monopoly over voice telephone services. Now they want to operate as a monopoly “bottleneck” or “BellGate” to control broadband services over telephone lines and over new fiber network upgrades. A BellGate would let them divide broadband services with the cable companies to form a duopoly, which does not compete on price.

The end game is quite simple – to freeze out competitive local exchange carriers and to avoid price competition with cable. If they succeed with BellGate, CLECs will

likely go out of business, the Bells will put both their voice and their broadband customers on their updated networks and customers will not have a meaningful choice on services or on price.

CLECs hold the key to the BellGate threat. They need access to both the old Bell voice (copper) networks and the new Bell broadband (fiber) networks. They also need access to cable networks. If such access is assured, CLECs will operate to reduce the monopoly threat of Bell voice and broadband services and to eliminate the non-price competitive duopoly between the Bells and the cable companies.

The Bells' lobbyists say that America urgently needs more new broadband networks. In the same breath, they also say they will not build them unless they are "de-regulated." Only a dominant player can successfully make such a threat. Such a player must not be de-regulated.

CLECs are dependent upon the Bells' networks to provide their services. The Bells have done everything in their power to destroy the CLECs. Since the Bells still dominate telecommunications services and control the 100-year-old voice communications network, "de-regulation" means letting the Bells continue to operate as dominant providers of telecommunications services without either regulatory oversight or the presence of competition. Both competitors and customers will suffer from such a result.

VII. Conclusions

The Commission should find that broadband is not competitive, that new technologies are making broadband the new "bottleneck" – or BellGate -- and that ILECs have considerable market power. Nevertheless, ILECs are expending enormous amounts

of resources to try to re-establish their intra-modal monopoly, assure the death of competitors and create an inter-modal duopoly with cable, since duopolies do not compete on price. In addition, they are attempting to achieve unfettered power by means of de-regulation, which would leave them with no competition and no regulation – no doubt a dream come true for the Bells but a death warrant for CLECs, consumers and the public interest. The FCC may not have a duty to protect “losing companies” but it does have a duty not to pick winners.

Respectfully submitted,

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